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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SARAH GREENE, personally and as  
next friend for S. G., a minor, and K.  
G., a minor.,

Plaintiff-Appellant,

v.

BOB CAMRETA; DESCHUTES  
COUNTY; JAMES ALFORD,  
Deschutes County Sheriff; BEND  
LAPINE SCHOOL DISTRICT; and  
TERRY FRIESEN,

Defendants-Appellees.

U.S.D.C. No. 05CV06047AA

U.S.C.A. No. 06-35333

APPELLEE BOB CAMRETA'S  
RESPONSE TO MOTION FOR  
ATTORNEY FEES

Plaintiff Sarah Greene has requested an award of appellate attorney fees under 42 U.S.C. § 1988 based on this court's decision in *Greene v. Camreta*, 588 F.3d 1011 (9<sup>th</sup> Cir. 2009). In that decision, this court affirmed the district court's grant of summary judgment to defendant Bob Camreta on Greene's Fourth Amendment claim (the "first issue"), based on qualified immunity. 588 F.3d at 1037. The court reversed the district court's summary judgment in

Camreta's favor on Greene's two Fourteenth Amendment claims, which related to a removal order concerning Greene's daughters (the "second issue") and Camreta's alleged decision to exclude Greene from her daughters' medical examinations at the KIDS Center (the "third issue"). *Id.* Greene asks for appellate attorney fees with respect to the first and third issues.

Because Camreta prevailed in this court on the first issue based on qualified immunity, Greene is not a prevailing party with respect to that issue. Greene therefore is not entitled to an award of appellate attorney fees on that issue. *See Citizens for Better Forestry v. U.S. Dept. of Agriculture*, 567 F.3d 1128, 1132 (9<sup>th</sup> Cir. 2009) (explaining *Hewitt v. Helms*, 482 U.S. 755 (1987): "though the plaintiff had obtained a favorable determination on the issue of whether there had been a constitutional violation, he ultimately received no relief from the district court and therefore was not entitled to attorneys' fees").

As for the third issue, the district court granted summary judgment to Camreta based on immunity. (E.R. 34; Opinion and Order at 16: "Camreta is entitled to immunity for excluding plaintiff from S.G. and K.G.'s medical examinations."). While Greene obtained a reversal of that immunity-based summary judgment, she did not prevail on the merits of the claim relating to the third issue. *Greene*, 588 F.3d at 1037. For that reason, she is not entitled to

appellate attorney fees. *See Marks v. Clarke*, 102 F.3d 1012, 1034 (9<sup>th</sup> Cir.), *cert. denied*, 522 U.S. 907 (1997) (“A party may be awarded attorney fees as a prevailing party at an interlocutory stage of the proceeding if the party prevails on the merits as to one or more of his or her claims.” (internal quotation marks omitted)).<sup>1</sup>

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<sup>1</sup> In any event, even if it could be said that Greene is a prevailing party on the third issue for purposes of § 1988 attorney fees, she fails to specifically itemize the attorney work on appeal for that issue (about one page of Greene’s six pages of argument in her opening brief was devoted to the third issue, Aplt.’s Br. 18-19, and only a short paragraph in her reply brief addressed the issue, Aplt.’s Reply Br. 10).

For the foregoing reasons, this court should deny the motion for attorney fees.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on March 26, 2010, I directed the Appellee Bob Camreta's Response to Motion for Attorney Fees to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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